IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

C.E.A. No.115 of 2006
Date of decision: October 13, 2006

Commissioner, Central Excise Commissionerate, Chandigarh.

-----Appellant

Vs.

M/s A.R. Alloys, Nasrali Road, Mandi Gobindgarh (Pb.).

-----Respondent

CORAM:- HON'BLE MR JUSTICE ADARSH KUMAR GOEL
HON'BLE MR JUSTICE RAJESH BINDAL

Present: Mrs. Daya Chaudhary, Assistant Solicitor General of India for the appellant.

ORDER:

This appeal has been preferred under Section 35(G) of the Central Excise Act, 1944 by revenue against the order dated 30.11.2005 (Annexure P-3) passed by the Customs, Excise and Service Tax Appellate Tribunal, New Delhi in Appeal No.E/3589/03, proposing following substantial question of law:-

> "Whether the Cenvat credit is allowable on the goods stated to have manufactured & supplied, when on physical verification it was found that no machinery/sufficient machinery was available to manufacture the huge quantity of goods?"

The adjudicating authority disallowed the claim for modvat credit on the ground that the supplier of inputs was not the manufacturer. This finding was recorded on the basis of investigations by the department. On appeal of the assessee, the Commissioner (Appeals) reversed the said finding having regard to the material on record that the supplier of inputs was having the machinery particulars of which were supplied to the department and was also engaged in regular manufacturing activities. This material could not be rebutted by the department. The said finding has been affirmed by the Tribunal.

In view of the findings recorded by the Commissioner (Appeals) and the Tribunal, we are unable to hold that any substantial question of law arises for consideration.

The appeal is dismissed.

(ADARSH KUMAR GOEL)
JUDGE

October 13, 2006
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(RAJESH BINDAL)
JUDGE